

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EDWIN C. MARTIN, JR., et al,)
)
Plaintiffs,)
)
vs.) Case No. 4:05CV1857 AGF
)
JAMES P. HOLLORAN, a professional)
corporation, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the court on the motion for summary judgement filed by Defendant Holloran Stewart & Schwartz. Plaintiffs filed this diversity suit against three Defendants: (1) James P. Holloran, a professional corporation; (2) Holloran Stewart & Schwartz, “a professional corporation, Successor in Interest to Law Offices of James P. Holloran, P.C.”; and (3) James P. Holloran, an individual. Plaintiffs assert breach of contract and related claims.

Under Missouri law, where one corporation sells or otherwise transfers all of its assets to another corporation, the latter may be held liable for the debts or liabilities of the transferor corporation when (1) the purchasing corporation expressly or impliedly agrees to assume the seller’s debts; (2) the transaction amounts to a consolidation or merger of the corporation; (3) the purchasing corporation is merely a continuation of the selling corporation; or (4) the transaction is entered into fraudulently to escape liability. Tucker

v. Paxson Mach. Co., 645 F.2d 620, 622 (8th Cir. 1981).

In its motion for summary judgment, Defendant Holloran Stewart & Schwartz asserts that Holloran Stewart & Schwartz is not a corporate entity or partnership, but “exists solely as a d/b/a/ designation for James P. Holloran, P.C.” This Defendant further asserts that it did not merge with James P. Holloran, P.C.; did not assume the debts of James P. Holloran, P.C.; and cannot be a “successor in interest to the Law Office of James P. Holloran,” as James P. Holloran, P.C., is a viable corporate entity employing James P. Holloran, Thomas L. Stewart, and Thomas E. Schwartz.

In support of its motion for summary judgment, Defendant Holloran Stewart & Schwartz has submitted a Certificate of Good Standing from the State of Missouri for James P. Holloran, P.C., and affidavits of James P. Holloran, Thomas L. Stewart, and Thomas E. Schwartz, each attesting to the above facts. Plaintiffs, in their response to the motion for summary judgment now before the court, did not offer any rebuttal evidence.

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be entered “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” When a motion for summary judgment is made and properly supported by evidence, the non-moving party may not rest on the allegations of his pleadings but must set forth specific facts, by affidavit or other evidence, showing that there is a genuine issue as to a material fact. Fed. R. Civ. P. 56(e).

Defendant Holloran Stewart & Schwartz has established that it is not a successor in interest to the Law Offices of James P. Holloran.

Accordingly,

IT IS HEREBY ORDERED that the motion for summary judgement filed by Defendant Holloran Stewart & Schwartz is **GRANTED**. [Doc. #14-1]

Audrey G. Fleissig
AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 9th day of April, 2008.